



DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 5

[Docket No. TTB-2021-0008]

[Notice No. 205]

RIN: 1513-AC61

Proposed Addition of Singani to the Standards of Identity for Distilled Spirits

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to amend the regulations that set forth the standards of identity for distilled spirits to include Singani as a type of brandy that is a distinctive product of Bolivia. This proposal follows a joint petition submitted by the Plurinational State of Bolivia and Singani 63, Inc., and subsequent discussions with the Office of the United States Trade Representative. TTB invites comments on this proposed amendment to its regulations, including comments on its proposal to authorize a minimum bottling proof of 35 percent alcohol by volume (or 70° proof) for Singani.

DATES: Comments must be received on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may electronically submit comments to TTB on this proposal, and view copies of this document, its supporting materials, and any comments TTB receives on it within Docket No. TTB-2021-0008 as posted at <https://www.regulations.gov>. A direct link to that docket is available on the TTB

Web site at <https://www.ttb.gov/distilled-spirits/notices-of-proposed-rulemaking> under Notice No. 205. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street, NW. Box 12, Washington, DC 20005. Please see the **Public Participation** section of this document for further information on the comments requested regarding this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Trevar D. Kolodny, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW., Box 12, Washington, DC 20005; telephone 202–453–2226.

SUPPLEMENTARY INFORMATION:

Background on the Labeling of Distilled Spirits

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), codified in the United States Code at 27 U.S.C. 205(e), authorizes the Secretary of the Treasury (the Secretary) to prescribe regulations relating to the packaging, marking, branding, labeling, and size and fill of containers of alcohol beverages that will prohibit consumer deception and provide consumers with adequate information as to the identity and quality of the product. Section 105(e) of the FAA Act also generally requires bottlers and importers of alcohol beverages to obtain certificates of label approval (COLAs) prior to bottling or importing alcohol beverages for sale in interstate commerce.

TTB administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). The Secretary has delegated various authorities through Treasury Department Order 120–01 (Revised), dated December 10, 2013 (superseding Treasury Department Order 120–01, dated

January 24, 2003), to the TTB Administrator to perform the functions and duties in the administration and enforcement of this law.

Part 5 of title 27 of the Code of Federal Regulations (27 CFR part 5) sets forth the regulations implementing those provisions of section 105(e) of the FAA Act as they pertain to distilled spirits.

Certificates of Label Approval

TTB regulations at 27 CFR 5.51 prohibit the release of bottled distilled spirits from customs custody for consumption unless the person removing the distilled spirits has obtained and is in possession of a COLA covering the product. The bottles must bear labels identical to the labels appearing on the face of the certificate, or labels with changes authorized by TTB. The TTB regulations at 27 CFR 5.55 also generally prohibit the bottling or removal of distilled spirits from a distilled spirits plant unless the proprietor possesses a COLA covering the labels on the bottle.

Classes and Types of Spirits

The TTB regulations at 27 CFR 5.22 establish standards of identity for distilled spirits products and categorize these products according to various classes and types. As used in § 5.22, the term “class” refers to a general category of spirits. Currently, there are 12 different classes of distilled spirits set out in § 5.22, such as whisky, rum, gin, and brandy. As used in § 5.22, the term “type” refers to a subcategory within a class of spirits. For example, “Cognac” and “Pisco” are types of brandy, and “Cachaça” is a type of rum.

The TTB labeling regulations at 27 CFR 5.32(a)(2) and 5.35 require that the class and type of distilled spirits appear on the product’s label. These regulations provide that the class and type must be stated in conformity with § 5.22 of the TTB regulations if defined therein. Otherwise, § 5.35 requires that the product must be designated in accordance with trade and consumer understanding thereof, or, if no such understanding exists, by a distinctive or fanciful name, and in either case (with limited exceptions), followed by a truthful and adequate statement of composition.

Classification of Singani

“Singani” is a term recognized by the Plurinational State of Bolivia (Bolivia) as a designation for an alcohol beverage product that is distilled from grape wine or grape pomace and produced in certain delimited parts of Bolivia. Under current TTB distilled spirits labeling regulations, Singani products are generally classified as brandies. Section 5.22(d) sets forth the standard of identity for brandy as follows:

Class 4; brandy. “Brandy” is an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 80° proof. Brandy, or mixtures thereof, not conforming to any of the standards in

paragraphs (d)(1) through (9) of this section shall be designated as “brandy”, and such designation shall be immediately followed by a truthful and adequate statement of composition.

In § 5.22, paragraphs (d)(1) through (9) categorize the specific types of brandy. As described by petitioners Singani 63, Inc. (Singani 63) and Bolivia, Singani may meet the criteria of several of these types of brandy, such as “fruit brandy” under paragraph (d)(1), or “pomace brandy” (including “grappa brandy”) under paragraph (d)(5), depending on the amount of pomace used.

In § 5.22, paragraph (d)(1) states that fruit brandy, derived from grapes, shall be designated as “grape brandy” or “brandy.” That regulation also generally requires brandies derived from grapes (other than neutral brandy, pomace brandy, marc brandy, grappa brandy, Pisco, Pisco Perú, or Pisco Chileno) that have been aged in oak barrels for less than two years to be labeled as “immature.” The Bolivian standards submitted by petitioners contain no aging requirements, and petitioners’ submissions suggest that, unlike many grape brandies, Singani is generally not aged in wood. Accordingly, under current TTB regulations, a Singani product classified as a grape brandy under paragraph (d)(1) would need to be labeled as an immature brandy unless it was aged in oak barrels for at least two years.

According to information submitted by the petitioners, under the standards set forth by Bolivia, certain categories of Singani may have a minimum alcohol content by volume of as low as 35 percent. However, under § 5.22(d), all brandy must be bottled at not less than 80° proof, or 40 percent alcohol by volume. Thus, under TTB’s current regulations, only Singani products bottled at a minimum alcohol content by volume of 40 percent may be labeled as any of the types of brandy specifically defined under the standard of identity in § 5.22(d). A Singani product bottled at less than 40 percent alcohol by volume could be

labeled as a “diluted” brandy in accordance with Ruling 75–32 of the Bureau of Alcohol, Tobacco and Firearms (ATF) (TTB’s predecessor agency), or as a distilled spirits specialty product bearing a statement of composition and fanciful name as required under § 5.35(a). Possible statements of composition for such a specialty product could include “spirits distilled from grapes” or “grape spirits.”

Singani Petitions and Letters

Petitions and Related Letters

TTB received a petition from Singani 63, a distilled spirits importer, dated November 18, 2014, proposing that TTB amend its regulations to recognize Singani as a type of brandy that is a distinctive product of Bolivia. In support of this petition, Bolivia submitted letters to TTB in December 2015 and January 2017. Singani 63 also submitted a letter to TTB in June 2017 that provided additional information related to the petition.

In its petition, Singani 63 stated that TTB’s recognition of Singani as a distinctive product would benefit consumers by informing them that the product was produced and labeled in compliance with Bolivia’s laws. It also asserted that Singani is a product that is distinct from other types of brandy. Furthermore, both Singani 63 and Bolivia indicated that Bolivia had established a legal standard for Singani as an exclusively Bolivian product.

In response to these submissions, TTB issued letters in February and October of 2017, in which TTB addressed the petitioner’s request for rulemaking and identified several deficiencies in the petition and its supporting documents. For instance, TTB noted that the submitted documents lacked substantiating information regarding Bolivia’s standards for the production of Singani. Accordingly, TTB did not undertake rulemaking at that time to amend its regulations as proposed in Singani 63’s petition.

TTB subsequently received a joint petition from Singani 63 and Bolivia in November 2018, again proposing that TTB recognize Singani as a type of brandy that is a distinctive product of Bolivia. The 2018 joint petition contained additional information in support of its regulatory proposal, including official translations of Bolivian laws and decrees governing the production of Singani.

2020 U.S.–Bolivian Exchange of Letters on Unique Distilled Spirits

Following discussions between officials of Bolivia and the Office of the United States Trade Representative (USTR), and after consultations between USTR and TTB, the United States Trade Representative and Bolivia's Minister of Foreign Affairs exchanged letters on January 6, 2020. The exchange of letters agreed upon a procedure that could potentially lead each party to recognize as distinctive certain distilled spirits products produced in the other party's territory.

The exchange of letters provides that the United States shall endeavor to publish a Notice of Proposed Rulemaking to promulgate a regulation that would provide that Singani is a type of brandy that is a distinctive product of Bolivia. The exchange of letters further provides that if, following this proposed rule, the United States publishes a final rule announcing the promulgation of a regulation establishing Singani as a type of brandy that is a distinctive product of Bolivia, then Bolivia shall, within thirty (30) days thereafter, recognize Bourbon Whiskey and Tennessee Whiskey as distinctive products of the United States. Following such recognition, Bolivia shall prohibit the sale within Bolivia of any product as Bourbon, Bourbon Whiskey, or Tennessee Whiskey, if it has not been manufactured in the United States in accordance with the laws and regulations of the United States governing the manufacture of Bourbon Whiskey and Tennessee Whiskey. These protections also apply to products spelled as "Bourbon Whisky" or "Tennessee Whisky."

Singani Production

The Bolivian decrees and regulations submitted with the 2018 joint petition, which are included in the rulemaking docket, establish that Bolivia defines “Singani” as a brandy product of Bolivia. Of the Bolivian decrees and regulations submitted, Bolivian Standard NB 324001 contains the most specific standards for Singani. Among other requirements, NB 324001 requires that Singani be obtained exclusively from *vitis vinifera* grapes grown in the traditional “zones of origin” at a minimum altitude of 1,600 meters above sea level. NB 324001 lists several different categories of Singani, some of which have more specific requirements, such as requiring the product to be made from Muscat of Alexandria grapes specifically. NB 324001 classifies Singani in the group “Brandies and liquors.”

In a prior rulemaking, TTB has distinguished Singani from Pisco, which is a type of grape brandy manufactured in Peru or Chile in accordance with the laws and regulations of those countries. In 2013, TTB updated its labeling regulations to add Pisco as a type of brandy that is manufactured only in Peru and Chile. In regard to brandy produced in Bolivia, TTB determined that it would not recognize Pisco as a type of brandy produced in that country. See T.D. TTB–113 (78 FR 28739, May 16, 2013). TTB stated that Bolivia maintains standards for Singani but not for Pisco, and cited other evidence suggesting that Pisco and Singani are different products.

TTB Regulatory Proposal

After reviewing the petitions, the regulations on the standards of identity in 27 CFR part 5, TTB’s Certificate of Label Approval (COLA) database, the exchange of letters between USTR and Bolivia’s Minister of Foreign Affairs, and the relevant laws and regulations of Bolivia, TTB has determined that amending

the standards of identity regulations at § 5.22 to recognize Singani as a distinctive product of Bolivia merits consideration and public comment, as invited in this notice of proposed rulemaking.

TTB believes that Singani generally meets the U.S. standard for brandy and should be classified as a type of brandy. TTB also believes that evidence suggests that the generally recognized geographical limits of the Singani-producing areas do not extend beyond the boundaries of Bolivia, and that Singani production is not associated with any areas outside of Bolivia. Moreover, the results of a search of TTB's COLA database did not show any approved COLAs that use the term "Singani" as the brand name or fanciful name, or as part of the brand name or fanciful name, for distilled spirits produced outside Bolivia.

Therefore, this document proposes to amend the standard of identity in § 5.22(d) by adding Singani as a type of brandy derived from grapes that is manufactured in Bolivia in compliance with the laws and regulations of Bolivia governing the manufacture of Singani for consumption in that country. If TTB recognizes Singani as a type of brandy as proposed, it would be permissible for Singani imported and sold within the United States to simply be labeled as "Singani" without the term "brandy" on the label, in the same way that products labeled with such type designations as "Cognac" or "Pisco" are not required to also bear the designation "brandy."

The other geographically distinctive types of brandy defined in § 5.22(d), Cognac and Pisco, are defined as grape brandies distinct to their respective places of origin. However, given that Singani could also meet the criteria of other types of brandies (such as pomace brandy under § 5.22(d)(5), depending on the

amount of pomace used), the proposed regulatory language describes Singani as “brandy derived from grapes” rather than as a “grape brandy.”

TTB notes that the Bolivian standard allows products designated as Singani to have an alcohol content ranging from 35 to 45 percent alcohol by volume, depending on the type of Singani produced. Because the Bolivian standard allows Singani to have an alcohol content as low as 35 percent alcohol by volume (or 70° proof), TTB is proposing to exempt Singani from the general requirement that brandy be bottled at not less than 80° proof (40 percent alcohol by volume) and is instead proposing a standard for Singani that would include products bottled at not less than 70° proof (35 percent alcohol by volume) in accordance with the laws and regulations of Bolivia. TTB regulations have not previously authorized bottling proofs for a type of product that are below the minimum prescribed for the product’s class designation, even when a foreign standard permits a lower proof, so TTB is soliciting comment on authorizing this standard for Singani.

In addition, the regulation at § 5.22(d)(1) generally requires that brandy derived from grapes that has been stored in oak containers for less than two years must be labeled with the word “immature.” However, it also lists several types of brandy (specifically neutral brandy, pomace brandy, marc brandy, grappa brandy, Pisco, Pisco Perú, and Pisco Chileno) that are exempt from this requirement. Because the Bolivian standards for Singani contain no specific aging requirements, TTB is proposing to amend § 5.22(d)(1) to clarify that Singani is likewise exempt from the requirement that it be labeled with the word “immature.”

Effect on Currently Approved Labels

If finalized, this amendment to the TTB regulations would revoke by operation of regulation any COLA that uses the term “Singani” as a designation for a distilled spirits product that was not manufactured in Bolivia in accordance with the laws and regulations of Bolivia governing the manufacture of Singani for consumption in that country. TTB has searched its COLA database and does not believe that this rulemaking will affect any existing labels.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on this proposed rule, including on whether the proposed amendment would have an adverse impact on owners of U.S. trademarks and on the extent to which distilled spirits labeled as “Singani” are produced outside Bolivia. Although information currently before TTB suggests that all distilled spirits currently sold in the United States with “Singani” on the label are produced in Bolivia, comments on the extent of production of Singani outside Bolivia, and on whether any existing labels will be affected by this proposal, will assist TTB in determining whether Singani should be recognized as a distinctive product of Bolivia.

TTB is also soliciting comments on its proposal to authorize a minimum bottling proof of 35 percent alcohol by volume (or 70° proof) for Singani. Because Bolivian standards authorize this 70° proof minimum, TTB is proposing to authorize the same minimum for purposes of the TTB regulations, even though § 5.22(d) generally requires that brandies be bottled at not less than 80° proof.

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the Regulations.gov website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment

must reference Notice No. 205 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may submit a comment requesting a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing. If TTB schedules a public hearing, it will publish a notice of the date, time, and place for the hearing in the **Federal Register**.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, its supporting materials, and any comments TTB receives about this proposal within the related Regulations.gov docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings division by email using the web form available at <https://www.ttb.gov/contact-rrd>, or by telephone at 202–453–2265, if you have any questions regarding comments on this proposal or to request copies of this document, its supporting materials, or the comments received in response.

Regulatory Analysis and Notices

Regulatory Flexibility Act

Pursuant to the requirements of the Regulatory Flexibility Act (5 U.S.C. chapter 6), TTB certifies that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The

proposed rule only amends the standards of identity for brandy at 27 CFR 5.22(d) and imposes no new reporting, recordkeeping, or other administrative requirements. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

Drafting Information

Trevar D. Kolodny of the Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, drafted this notice of proposed rulemaking.

List of Subjects in 27 CFR Part 5

Advertising, Alcohol and alcoholic beverages, Consumer protection, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, and Reporting and recordkeeping requirements.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 5, Code of Federal Regulations, as follows:

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

1. The authority citation for part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

Subpart C—Standards of Identity for Distilled Spirits

2. Section 5.22 is amended by:
 - a. Revising paragraph (d) introductory text;
 - b. In paragraph (d)(1), revising the third sentence; and
 - c. Adding new paragraph (d)(10).

The revisions and addition read as follows:

§ 5.22 The standards of identity.

* * * *

(d) *Class 4; brandy.* “Brandy” is an alcoholic distillate from the fermented juice, mash, or wine of fruit, or from the residue thereof, produced at less than 190° proof in such manner that the distillate possesses the taste, aroma, and characteristics generally attributed to the product, and bottled at not less than 80° proof except as otherwise provided in paragraph (d)(10) of this section. Brandy, or mixtures thereof, not conforming to any of the standards in paragraphs (d)(1) through (10) of this section shall be designated as “brandy”, and such designation shall be immediately followed by a truthful and adequate statement of composition.

(1) * * * Fruit brandy, derived from grapes, shall be designated as “grape brandy” or “brandy”, except that in the case of brandy (other than neutral brandy, pomace brandy, marc brandy, grappa brandy, Pisco, Pisco Perú, Pisco Chileno, or Singani) distilled from the fermented juice, mash, or wine of grapes, or the residue thereof, which has been stored in oak containers for less than 2 years, the statement of class and type shall be immediately preceded, in the same size and kind of type, by the word “immature”. * * *

* * * *

(10) “Singani” is brandy derived from grapes that is manufactured in Bolivia in accordance with the laws and regulations of Bolivia governing the manufacture of Singani for consumption in that country, and includes Singani bottled at not less than 70° proof in accordance with such laws and regulations.

* * * *

Signed: July 21, 2021.

Mary G. Ryan,

Administrator.

Approved: July 23, 2021.

Timothy E. Skud,

*Deputy Assistant Secretary
(Tax, Trade, and Tariff Policy).*

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